Indian Claims Commission

MISSISSAUGAS OF THE NEW CREDIT FIRST NATION

Report on: Toronto Purchase Claim

103-05174/

Indian Claims Commission

Commission des revendications des Indiens

June 17, 2003

Chief Bryan LaForme
Mississaugas of the New Credit First Nation

The Honourable Robert Nault
Minister of Indian Affairs and Northern Development

The Honourable Martin Cauchon
Minister of Justice and Attorney General of Canada

Re: Mississaugas of the New Credit First Nation Inquiry – Toronto Purchase Claim

The Mississaugas of the New Credit First Nation initiated proceedings before this Commission by a letter dated May 10, 1994, from the First Nation to the Indian Claims Commission.

In view of Canada's acceptance, the Commission has taken no further steps to inquire into the First Nation's claim. Our review of the history of this claim and summary of the events are contained in the attached report, which we are now honoured to present to you.

FOR THE INDIAN CLAIMS COMMISSION

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INDIAN CLAIMS COMMISSION

MISSISSAUGAS OF THE NEW CREDIT FIRST NATION INQUIRY

TORONTO PURCHASE CLAIM

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CONTENTS

PART I	**INTRODUCTION**	1
	MANDATE OF THE INDIAN CLAIMS COMMISSION	4
PART II	**HISTORICAL BACKGROUND**	7
	BACKGROUND TO THE FIRST NATION'S CLAIM	7
	SETTLEMENT OF THE MISSISSAUGAS ON THE NORTH SHORE OF LAKE ONTARIO	9
	SURRENDER OF THE "CARRYING PLACE" AND TORONTO PURCHASE, 1787	13
	FORMALIZING THE TORONTO PURCHASE, 1805	24
PART III	**ISSUES**	33
PART IV	**CONCLUSION**	35

APPENDICES

A	Mississaugas of the New Credit First Nation Inquiry – Toronto Purchase Claim	37
B	Government of Canada's Offer to Accept the Claim	39

PART I

INTRODUCTION

In June 1986, the Mississauga Tribal Claims Council submitted a number of claims, including the Toronto Purchase claim, to the Specific Claims Branch of the Department of Indian Affairs and Northern Development (DIAND).[1] The claims were submitted on behalf of five First Nations, one of which was the Mississaugas of the New Credit. The claim in respect of the Toronto Purchase alleged that a vast expanse of land in southern Ontario, which includes Metropolitan Toronto, had never been properly surrendered to the Crown. It also alleged that the transactions concerning the purchase, which took place in 1787 and 1805, were tainted by breaches of the fiduciary duty owed by the Crown to the Mississauga Nation.

On June 15, 1993, Christine Cram, Director of Specific Claims East, wrote to the Chiefs of the five First Nations, advising them of the federal government's preliminary position on the claims. She advised that the claims, including the Toronto Purchase claim, did not fall within the scope of the Specific Claims Policy and, as a result, must be rejected.[2]

In May 1994, the Mississaugas of the New Credit First Nation, forwarded a Band Council Resolution (BCR) to the Indian Claims Commission, requesting that the Commission review the Toronto Purchase claim.[3] Subsequently, Commission employees held discussions with representatives of all five First Nations to determine whether the Toronto Purchase claim, as well as the other claims, fell within the Commission's mandate. A number of preliminary planning conferences were held, and ultimately, the Commissioners decided to conduct an inquiry into the Toronto Purchase claim.[4]

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1 Union of Ontario Indians, "Mississauga Tribal Claims Council, Claim to Toronto Purchase Lands in Southern Ontario Summary of Claim," June 10, 1986 (ICC Exhibit 2).

2 Christine Cram, Specific Claims East, to Chief Maurice LaForme et al., June 15, 1993 (ICC Exhibit 5a).

3 Deborah Ngahuka, Executive Assistant, Mississaugas of the New Credit First Nation, to Kim Fullerton, Commission Counsel, Indian Claims Commission (ICC), May 10, 1994, enclosing Band Council Resolution 1994/1995 - 085 (ICC file 2105-15-4, vol. 1).

4 Daniel Bellegarde and James Prentice, Co-Chairs, ICC, to Chief Larry Sault, Mississaugas of the New Credit First Nation, September 25, 1995 (ICC file 2105-15-4, vol. 2).

However, for a number of reasons, the First Nations were not prepared to proceed with the claims at that time, and they were put into abeyance in early 1996.

On March 10, 1998, Chief Carolyn King of the Mississaugas of the New Credit First Nation wrote to the Indian Claims Commission requesting that the Commission conduct an inquiry into the rejection of the Toronto Purchase claim as against the New Credit First Nation individually, even though the claim had originally been submitted by a group of First Nations.[5] On May 6, the Commission informed the Specific Claims Branch and DIAND Legal Services of this development, and asked for their participation in a planning conference.[6]

The first planning conference was held on July 16,1998, and it led to the parties' agreeing to clarify the issues and their respective positions.[7] Subsequently, Kim Fullerton, counsel for the First Nation, wrote to Perry Robinson, counsel for Canada, proposing that Canada agree to allow the Toronto Purchase claim to proceed on its own. He also set out the First Nation's position, which included two bases upon which a lawful obligation could be found. The first was that the original 1787 purchase transaction was invalid. The second was that the circumstances leading up to the execution of the 1805 treaty amounted to a breach of the fiduciary duty owed to the ancestors of the plaintiffs. With respect to these circumstances, the First Nation alleged that (1) the Crown had never disclosed to the First Nation that the 1787 transaction was invalid; (2) the Crown had failed to disclose that the 1805 treaty covered a much greater area than the 1787 purchase; and (3) the Mississaugas had no idea that the Toronto Islands were to be part of the purchase.[8]

Three subsequent planning conferences, held on October 1, 1998, November 25, 1998, and February 8, 1999, dealt with many technical issues, such as the clarification of evidence and the production of relevant maps. A more significant issue, however, was Canada's concern that the claim, as originally framed, did not fall within the Commission's Specific Claims mandate. As a

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5 Chief Carolyn King, Mississaugas of the New Credit First Nation, to Daniel Bellegarde and James Prentice, ICC, March 10, 1998 (ICC file 2105-7-2, vol. 1).

6 Ron S. Maurice, Commission Counsel, ICC, to Michel Roy, Director General, Specific Claims Branch, and W. Elliott, Senior General Counsel, DIAND Legal Services, May 6, 1998 (ICC file 2105-7-2, vol. 1).

7 ICC, Planning Conference Summary, July 16, 1998 (ICC file 2105-7-2, vol. 1).

8 Kim Fullerton, Legal Counsel for the Mississaugas of the New Credit First Nation, to Perry Robinson, Counsel, DIAND Legal Services, September 28, 1998 (ICC file 2105-7-2, vol. 1).

result, counsel for the First Nation agreed to draft a new legal submission, in order to frame clearly the legal basis of the claim within the scope of the Specific Claims mandate.

On March 8, 1999, counsel for the First Nation forwarded a new legal submission to counsel for Canada. Although the legal issues did not differ substantially from the September 28 submission, the new submission related the applicable law to the factual allegations in greater detail than had the earlier submission. As well, the new document reiterated that, for the purpose of the inquiry, the First Nation was prepared to recognize that the 1805 purchase was a valid treaty. More importantly, however, it confirmed that the First Nation did not take the position that the Toronto Islands were excluded from the purchase, which was what had given rise to Canada's concern that the claim fell outside of the Specific Claims mandate.[9]

As a result of the new legal submission, Canada agreed to review the claim on its merits, in accordance with the issues set out in the March 8, 1999, legal submission.[10] As a consequence, planning conferences that dealt with technical issues, such as exhibits and maps, as well as the progress of the new legal opinion, took place on April 13 and June 10, 1999.[11] Planning conferences on July 27 and September 14, 1999, examined the issue of additional beneficiaries, as well as the need for new research.[12] In addition, planning conferences on October 19 and December 20, 1999, finalized any remaining undertakings and points of agreement between the parties.[13] In the meantime, the parties waited for Canada to complete its review of the claim.

Over the next six months, the parties received several updates on the status of the claim by conference call. There were no further developments, however, until the Minister of Indian Affairs notified Chief Bryan LaForme on July 23, 2002, that Canada was willing to accept the claim in

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9 Kim Fullerton, Legal Counsel for the Mississaugas of the New Credit First Nation, to Perry Robinson, Counsel, DIAND Legal Services, March 8, 1999 (ICC file 2105-7-2, vol. 1).

10 Perry Robinson, Counsel, DIAND Legal Services, to David Osborn QC, Commission Counsel, ICC, and Kim Fullerton, Legal Counsel for the Mississaugas of the New Credit First Nation, April 12, 1999 (ICC file 2105-7-2, vol. 1).

11 ICC, Planning Conference Summary, April 13, 1999, and June 10, 1999 (ICC file 2105-7-2, vol. 1).

12 ICC, Planning Conference Summary, July 27, 1999, and September 14, 1999 (ICC file 2105-7-2, vol. 2).

13 ICC, Planning Conference Summary, October 19, 1999, and December 20, 1999 (ICC file 2105-7-2, vol. 2).

part.[14] On the same day, Mr Michel Roy, Assistant Deputy Minister, Claims and Indian Government, wrote to Chief LaForme outlining the basis on which Canada was willing to negotiate. In summary, Canada took the position that it would negotiate under the Specific Claims Policy on the basis that the 1805 surrender amounted to a non-fulfillment of a treaty or agreement between the Indians and the Crown. It did not concede that there had been a breach of fiduciary duty in the negotiation of the 1805 surrender such that there existed an outstanding lawful obligation on the part of Canada. The correspondence from the Assistant Deputy Minister also set out the compensation criteria by which Canada was willing to negotiate the claim, and outlined various other conditions governing the negotiation process.[15] The Indian Claims Commission was notified of the government's decision by Assistant Deputy Minister Roy on the same day.[16]

As a result, the Commission has suspended its inquiry into the claim. This report is based on historical reports and documents submitted to the Commission by the Mississaugas of the New Credit and by the Department of Indian Affairs and Northern Development. The balance of the record in this inquiry is referenced as Appendix A to this report.

Mandate of the Indian Claims Commission

The Commission was established in 1991 to assist First Nations and Canada in the negotiation and fair resolution of specific claims. The Commission's mandate to conduct inquiries pursuant to the *Inquiries Act* is set out in federal Orders in Council providing the Commissioners with the authority to conduct public inquiries into specific claims and to issue reports on "whether a claimant has a valid claim for negotiation under the [Specific Claims] Policy where the claim was already rejected by the Minister."[17]

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[14] Honourable Robert D. Nault, Minister of Indian Affairs and Northern Development, to Chief Bryan LaForme, Misssissaugas of the New Credit First Nation, July 23, 2002 (ICC file 2105-7-2, vol. 3).

[15] Michel Roy, Assistant Deputy Minister, DIAND, Claims and Indian Government, to Chief Bryan LaForme, Mississaugas of the New Credit First Nation, July 23, 2002 (ICC file 2105-7-2, vol. 3).

[16] Michel Roy, Assistant Deputy Minister, DIAND, Claims and Indian Government, to Ralph Brant, Director of Mediation, ICC, July 23, 2002 (ICC file 2105-7-2).

[17] Commission issued September 1, 1992, pursuant to Order in Council PC 1992-1730, July 27, 1992, amending the Commission issued to Chief Commissioner Harry S. LaForme on August 12, 1991, pursuant to Order in Council PC 1991-1329, July 15, 1991.

This Policy, outlined in the department's 1982 booklet entitled *Outstanding Business: A Native Claims Policy – Specific Claims*, states that Canada will accept claims for negotiation where they disclose an outstanding "lawful obligation" on the part of the federal government.[18] The term "lawful obligation" is defined in *Outstanding Business* as follows:

> The government's policy on specific claims is that it will recognize claims by Indian bands which disclose an outstanding "lawful obligation," i.e., an obligation derived from the law on the part of the federal government.
>
> A lawful obligation may arise in any of the following circumstances:
>
> i) The non-fulfillment of a treaty or agreement between Indians and the Crown.
> ii) A breach of an obligation arising out of the *Indian Act* or other statutes pertaining to Indians and the regulations thereunder.
> iii) A breach of an obligation arising out of government administration of Indian funds or other assets.
> iv) An illegal disposition of Indian land.

The policy also addresses the following types of claims, characterized as "Beyond Lawful Obligation":

> i) Failure to provide compensation for reserve lands taken or damaged by the federal government or any of its agencies under authority.
> ii) Fraud in connection with the acquisition or disposition of Indian reserve land by employees or agents of the federal government, in cases where the fraud can be clearly demonstrated.[19]

The Commission has the authority to review thoroughly the historical and legal bases for the claim and the reasons for its rejection with the claimant and the government. The *Inquiries Act* gives the Commission wide powers to conduct such an inquiry, to gather information, and even to subpoena evidence if necessary. If, at the end of an inquiry, the Commission concludes that the facts and law support a finding that Canada owes an outstanding lawful obligation to the claimant First Nation,

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[18] DIAND, *Outstanding Business: A Native Claims Policy – Specific Claims* (Ottawa: Minister of Supply and Services, 1982), 20; reprinted in (1994), 1 ICCP 171–85 (hereafter *Outstanding Business*).

[19] *Outstanding Business*, 20; reprinted in (1994), 1 ICCP 171–85.

it may recommend to the Minister of Indian Affairs and Northern Development that the claim be accepted for negotiation.

PART II

HISTORICAL BACKGROUND

BACKGROUND TO THE FIRST NATION'S CLAIM

The Mississaugas, a branch of the Ojibwa or Chippewa Indians, were occupying lands on the north shore of Lake Huron when they first encountered Europeans in the early 17th century.[20] To the south of the Mississaugas resided the Hurons, who at that time inhabited the lands around Georgian Bay south to the north shore of Lake Ontario. Across Lake Ontario, in present-day New York State, lay the territory of the Iroquois, who were organized into a confederacy of Five Nations.[21]

The Mississaugas had traditionally lived by fishing and hunting but, like all original peoples in Ontario, they were eventually drawn into the fur trade. The development of this economic activity was a pivotal event in their history, as it was for all First Nations. By their participation in the fur trade, they gained access to European technology, such as weapons and ammunition, as well as other consumer goods. The acquisition of these goods came at a price, however. They became increasingly dependent on trade goods for their survival, and the competition for furs to satisfy the rival European mercantile interests eventually promoted strife between the Mississaugas and other nations living nearby.

The Mississaugas' first contact with Europeans had been with explorers and traders from New France. Over time, they, along with the Hurons, became allies of New France, both economically and militarily. The Mississaugas provided furs to the Hurons, who acted as middlemen in the trade with the French. In contrast, the Five Nations traded primarily with the Dutch, and later the British, which placed them in competition for furs with the First Nations located further north.

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[20] E.S. Rogers, "Southeastern Ojibwa," in *Handbook of North American Indians, vol. 15: Northeast*, vol. ed. Bruce G. Trigger (Washington: Smithsonian Institution, 1978), 760. As we wrote in ICC, *Chippewa Tri-Council Inquiry (Chippewas of Beausoleil First Nation, Chippewas of Georgina Island First Nation, Chippewas of Rama First Nation) Collins Treaty Claim* (Ottawa, March 1998), reported (1998) 10 ICCP 43: "It should be noted that "Ojibwa," "Chippewa," "Saulteaux," and "Mississauga" all refer to peoples speaking similar and in some cases the same dialects of the Algonquian language. Although the names were often used interchangeably, as a general rule early settlers ... generally applied the term "Mississauga" to those living along the north shore of Lake Ontario and in the Trent River Valley."

[21] In the 17th century, the Iroquois Confederacy consisted of the Mohawk, Oneida, Onondaga, Cayuga, and Seneca nations. In 1722, they were joined by the Tuscarora, and became known as the Six Nations. Donald B. Smith, "Who are the Mississauga?" in (1975), 67, no. 4 *Ontario History* 211–22.

By the mid-17th century, the competition for furs had escalated into warfare. As a result of the depletion of beaver in their homelands, the Iroquois Confederacy began to invade the territory of the Hurons around 1640, and had succeeded in completely displacing the latter by 1650.[22]

Now in control of the north shore of Lake Ontario, the Iroquois Confederacy pressed forward against the Ojibwa allies of the Hurons, including the Mississaugas, in order to maintain their access to the rich fur territory to the north. In this the Iroquois were initially successful. Better armed by the Dutch than the Hurons and Ojibwas had been by the French, the Iroquois were able to maintain control of the region for the next 40 years.[23]

Although the Mississaugas had been subject to attacks by the Iroquois throughout this period, they had not been defeated. When attacked in their own territory near Lake Huron, they were often able to repel or vanquish their attackers. They continued to trade with the French via the more northerly canoe routes leading to Quebec and Trois-Rivières. As a result, they were able to obtain more arms and ammunition.[24] They also benefitted from New France's raids against the Iroquois, which were undertaken to ensure a steady supply of furs from its aboriginal trading partners.

During the latter part of the 17th century, the Iroquois Confederacy was seriously weakened by the wars with the French and by debilitating diseases.[25] As a result, the Confederacy concluded a peace agreement with New France in 1667 and ceased hostilities against the Mississaugas.[26] This situation not only gave the Mississaugas unimpeded access to their French trading partners, it also enabled them to trade with the Iroquois for better-priced British goods.

This period of stability continued until the 1690s. It enabled the Mississaugas not only to increase in number, but also to consolidate their strength, as a result of the availability of more trade

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22 Elisabeth Tooker, "The Five (Later Six) Nations Confederacy, 1550-1784," in *Aboriginal Ontario: Historical Perspectives of the First Nations* (Toronto: Dundurn Press, 1994), 83.

23 Peter S. Schmalz, *The Ojibwa of Southern Ontario* (Toronto: University of Toronto Press, 1991), 18–20.

24 Peter S. Schmalz, *The Ojibwa of Southern Ontario* (Toronto: University of Toronto Press, 1991), 18–20.

25 Donald B. Smith, "The Dispossession of the Mississauga Indians: a Missing Chapter in the Early History of Upper Canada," in (1981), 73, no. 2 *Ontario History* 68 (ICC Documents, p. 883 EC).

26 Donald B. Smith, "Who are the Mississauga?" in (1975) 67, no. 4 *Ontario History* 213–14.

goods at a cheaper cost.[27] They were not to remain content with the status quo, however. Beginning in 1695, the Ojibwas went on the offensive against the Iroquois Confederacy, in part to avenge the raids of the 1650s, and in part to eliminate the Iroquois as middlemen in the trade with the English.[28] In the course of this conflict, the Mississaugas began to penetrate into southern Ontario to engage in battles with the Iroquois. By 1700, the Mississaugas had succeeded in expelling the Iroquois and taken control of the north shore of Lake Ontario. In that year, representatives of the Mississaugas and other Ojibwa groups travelled to Onondaga, the capital of the Iroquois Confederacy, with an offer of peace. In exchange for the Confederacy's recognition of the Mississaugas' territorial control, and an agreement to allow them direct access to English fur traders, the Mississaugas offered to cease hostilities. The offer of peace was accepted in June 1700, and as a result, the Mississaugas secured their control of the territory between Lake Huron and Lake Ontario.[29] They would occupy these lands until the land cessions of the late 18th and early 19th centuries confined them to a very small proportion of their former territory.

Settlement of the Mississaugas on the North Shore of Lake Ontario

With their advantageous location on the shortest water routes from the interior to New France, and with equal access to the British in New York, the Mississaugas were about to enter a period of prosperity, which would continue for some 60 years. Competition between the French and English for furs kept the price of fur high and that of trade goods low. Although the French had built forts on and near Lake Ontario to curtail Indian trade with the British, they were not able to prevent the Mississaugas from trading with both sides.

By the 1730s, it was estimated that the Mississaugas of southern Ontario numbered between 1,000 and 1,500 people.[30] Semi-nomadic, they spent the summers in villages near the mouths of rivers and creeks emptying into Lake Ontario, including Bronte Creek, Sixteen Mile Creek, the

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27 Peter S. Schmalz, *The Ojibwa of Southern Ontario* (Toronto: University of Toronto Press, 1991), 21.

28 Donald B. Smith, "Who are the Mississauga?" in (1975), 67, no. 4 *Ontario History* 215.

29 Donald B. Smith,"Who are the Mississauga?" in (1975), 67, no. 4 *Ontario History* 215–17.

30 E.S. Rogers, "Southeastern Ojibwa," in *Handbook of North American Indians, vol. 15: Northeast*, vol. ed., Bruce G. Trigger (Washington: Smithsonian Institution, 1978), 762.

Credit River, Etobicoke Creek, and the Humber River. East of the Humber was a long peninsula (today the Toronto Islands) which, with the mainland, formed a deep harbour. To this place "the Mississauga brought their sick to recover in its health-giving atmosphere."[31] In addition, the Mississauga were settled at the Trent River, the Bay of Quinte (known as Kente), and as far east as Fort Frontenac (Kingston). In the fall and winter, however, they ventured north into their hinterland to hunt, both for food and for furs.

Although the fur trade allowed the Mississaugas to prosper during the first half of the 18th century, over time they became increasingly dependent upon European trade goods for their very survival. This situation was not a problem as long as those goods were readily available and inexpensive. Wars between the French and English in Europe, and the resulting blockade of shipping routes to North America, however, caused a shortage in the supply of goods that had become necessities of life. As a consequence, the Mississaugas were drawn into foreign conflicts played out on North American soil, in the hope of plundering the necessary tools, implements, and weapons from the enemy of their European ally.[32]

Trade and plunder were not the only means of acquiring the valued trade articles. To ensure their economic and military loyalty, colonial authorities had developed the practice of giving "presents" to Indian nations. The presents, which included weapons, tools, and implements, were the primary vehicle of diplomacy between Europeans and First Nations. This method of maintaining alliances with the Mississaugas and others was extensively utilized by the French during the Seven Years' War, which broke out in 1756. Together with less quantifiable factors, such as the growing network of family ties between the Ojibwas and the French, the presents facilitated the alliance between the two, and the Mississaugas took the side of the French at the beginning of the war.[33]

As the war dragged on, however, the French were not able to keep themselves adequately supplied, much less maintain the level of presents formerly given to their Indian allies. When the

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[31] Donald B. Smith, "The Dispossession of the Mississauga Indians: a Missing Chapter in the Early History of Upper Canada," in (1981), 73, no. 2 *Ontario History* 71 (ICC Documents, p. 883 EF).

[32] Peter S. Schmalz, *The Ojibwa of Southern Ontario* (Toronto: University of Toronto Press, 1991), 36–42.

[33] Peter S. Schmalz, *The Ojibwa of Southern Ontario* (Toronto: University of Toronto Press, 1991), 50.

French were defeated at Fort Niagara in 1759, the Mississaugas were motivated to meet with the British Superintendent of Northern Indians, Sir William Johnson, and to change sides.[34] In receipt now of Johnson's lavish presents,[35] the Mississaugas remained on the side of the British for the rest of the war.

The British would not provide presents on the same grand scale indefinitely, however. After 1761, the quantity of presents was greatly reduced, as it was no longer considered necessary to incur expense in exchange for the loyalty of the First Nations of what would become Ontario.[36] In addition, the withdrawal of the French following the official cession of New France to Great Britain in 1763 enabled private British traders to raise the price of trade goods relative to the value of furs, thereby making the trade goods less accessible to the Indians. Together, these developments caused dismay and discontent among the Mississaugas, not only because they had viewed the presents as an acknowledgement of their sovereignty,[37] but also because the higher cost and resulting inaccessibility of European weapons, tools, and implements threatened their survival. Another alarming development consequent upon the withdrawal of the French was the increasing influx of settlers from the British colonies into the lands the Indians considered their own.[38] This phenomenon threatened their food supply and fostered discontent.

As a result, the next decade was characterized by intermittent violent conflict between the British and the Mississaugas, as the former struggled to establish their colonial control over the territories formerly held by the French. The Ojibwas, including some Mississaugas, had responded to the radical changes taking place around them by taking part in the Indian uprising known as the Pontiac War. Although the British had initially retaliated, they quickly came to understand that their colonial aims could only be achieved through long-term peace with the native inhabitants of the territory, and they took steps to restore their alliances with the Ojibwas.

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34 Donald B. Smith, "Who are the Mississauga?" in (1975), 67, no. 4 *Ontario History* 221.

35 Peter S. Schmalz, *The Ojibwa of Southern Ontario* (Toronto: University of Toronto Press, 1991), 60.

36 Peter S. Schmalz, *The Ojibwa of Southern Ontario* (Toronto: University of Toronto Press, 1991), 70.

37 Peter S. Schmalz, *The Ojibwa of Southern Ontario* (Toronto: University of Toronto Press, 1991), 69.

38 Olive Dickason, *Canada's First Nations* (Toronto: McClelland & Stewart, 1992), 180.

The British recognized that, to allay some of the Indians' concerns, the purchase of Indian lands must be regulated. In 1763, King George III issued the *Royal Proclamation*, to establish how the newly acquired territories, including the portion of southern Ontario occupied by the Mississaugas, would be managed:

> And whereas great Frauds and Abuses have been committed in purchasing Lands of the Indians, to the great Prejudice of our Interests, and to the great Dissatisfaction of the said Indians; In order, therefore, to prevent such Irregularities for the future, and to the end that the Indians may be convinced of our Justice and determined Resolution to remove all reasonable Cause of Discontent, We do, with the Advice of our Privy Council strictly enjoin and require, that no private Person do presume to make any purchase from the said Indians of any Lands reserved to the said Indians, within those parts of our Colonies where, We have thought proper to allow Settlement; but that, if at any Time any of the Said Indians should be inclined to dispose of the said Lands, the same shall be Purchased only for Us, in our Name, at some public Meeting or Assembly of the said Indians, to be held for that Purpose by the Governor or Commander in Chief of our Colony respectively within which they shall lie ...[39]

A central feature of this document was the recognition that "great Frauds and Abuses" had been committed by British subjects in the acquisition of Indian lands. Of equal significance was the provision that lands occupied by the First Nations in the interior of the continent were to be reserved to them exclusively. The *Proclamation* forbade the settlement of those territories by non-Indians and decreed that Indian land could only be alienated by negotiation and sale to the Crown.

Although the *Royal Proclamation* would have great historical and legal significance to all First Nations in the future, other conciliatory actions held more immediate relevance to the Mississaugas in the early years of the British administration. Primary among these was the reinstatement of the custom of bestowing presents, and by the time that the American Revolution broke out in 1775, the Mississaugas were again firmly allied with the British.[40]

During the American revolutionary war, the British supplied the Mississaugas with presents of iron axes, kettles, woollen clothing, guns, and ammunition in order to obtain their military

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[39] *Royal Proclamation of 1763* (ICC Documents, pp. 1-7).

[40] Donald B. Smith, "The Dispossession of the Mississauga Indians: a Missing Chapter in the Early History of Upper Canada," in (1981), 73, no. 2 *Ontario History* 71 (ICC Documents, p. 883 EF).

assistance in raids against the American colonists.[41] A more insidious aspect of the British authorities' largesse was the increasing availability of alcohol, which, over the long term, contributed to cultural disintegration among many of the Ojibwas of southern Ontario. All of these factors increased the dependence of the Mississaugas on Europeans and their trade goods. As a consequence, the surrender of land in exchange for those goods would become an attractive option to the Mississaugas in future years.

Surrender of the "Carrying Place" and Toronto Purchase, 1787

By the terms of the Treaty of Paris, which formally ended the hostilities between Great Britain and its former American colonies, a boundary dividing the territories of the two was drawn through the middle of the Great Lakes. As a result, the importance of the land north of Lake Ontario increased dramatically, not only for its strategic and military value, but also as the destination of loyal British subjects fleeing the newly independent United States. The latter included many Iroquois who had remained loyal to the British Crown, and who had lost their homes and villages at the hands of the seceding American colonists.

As early as 1781, the Mississaugas had surrendered a strip of land along the entire west bank of the Niagara River from Lake Ontario to Lake Erie.[42] This transaction had arisen as a result of then Governor Haldimand's scheme to strengthen British military outposts on the Great Lakes by establishing agricultural settlements in their immediate vicinity.[43] In addition, the British authorities needed land for some of the Iroquois of New York State, who had been offered asylum in Canada. As a result, in 1783, the Mississaugas were persuaded to surrender land at Quinte for this purpose.

By the mid-1780s, the British authorities had decided to allow the loyalist refugees to settle in large numbers in the territory that the *Royal Proclamation* had decreed was Indian land. It was therefore necessary to acquire land from the Mississaugas for some 10,000 United Empire Loyalists

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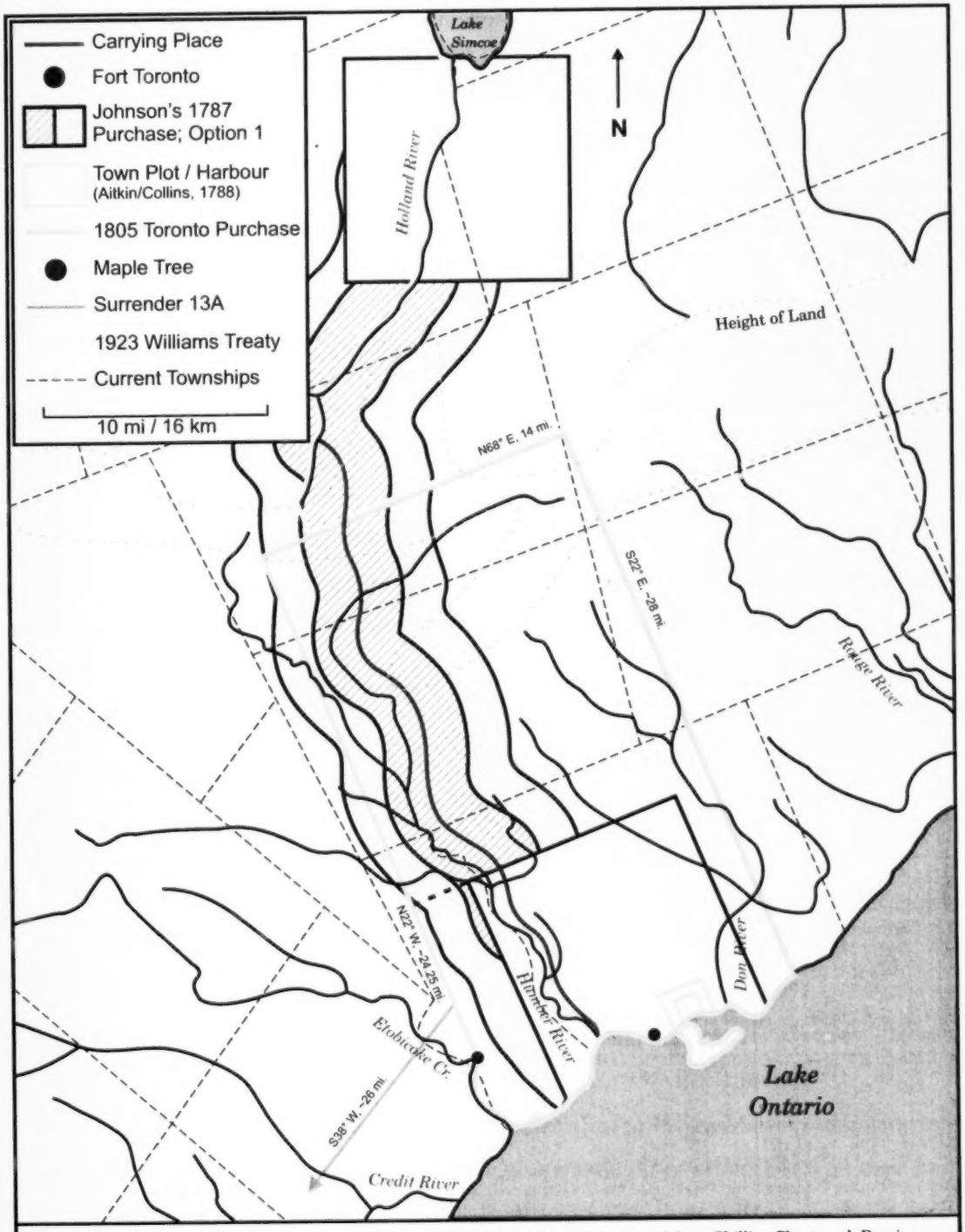
41 Donald B. Smith, "The Dispossession of the Mississauga Indians: a Missing Chapter in the Early History of Upper Canada," in (1981), 73, no. 2 *Ontario History* 71 (ICC Documents, p. 883 EF).

42 Robert J. Surtees, "Land Cessions, 1763–1830," in *Aboriginal Ontario: Historical Perspectives of the First Nations* (Toronto: Dundurn Press, 1994), 97.

43 Robert J. Surtees, "Indian Land Surrenders in Ontario: 1763-1867," unpublished paper, February 1984, p. 14 (ICC Exhibit 10).



Based on ICC Exhibit 14, Map 1: Fort Toronto as Reference Point, in Gwen Reimer and Jean-Phillipe Chartrand, Praxis Research associates, with Steven Prashker, GeoWare Consultants., "Final Report Pertaining to Map Preparation, Re: Mississaugas of New Credit First Nation Toronto Purchase Claim," Ottawa, 27 October 1999.

who flooded into southern Ontario between 1783 and 1785.[44] As well, several thousand Iroquois under the leadership of Joseph Brant had indicated their desire to settle at the western end of Lake Ontario, rather than at Quinte. As a result, in 1784, the Mississaugas surrendered a huge tract of land in the Niagara peninsula, which included land on the Grand River for the Iroquois. For these lands the British gave £1,180 in trade goods, including clothing, guns, and ammunition.[45]

It was shortly after this exchange that a tract of land banding the north shore of Lake Ontario, as well as the "Carrying Place" of Toronto, came to the attention of the British colonial authorities. The Carrying Place was an ancient aboriginal portage from the mouth of the Humber River to the Holland River, part of the route from Lake Ontario to Lake Huron that wound northward via Lake Simcoe and from there to Georgian Bay. It had been in use long before the Mississaugas settled permanently on the shores of Lake Ontario, and was well known to French explorers such as La Salle, who traversed it in the late 17th century on his way to and from the Mississippi.[46] After the Mississaugas arrived in the region, it remained part of the regular transportation route into their hinterland:

> They [the Mississaugas] termed the Humber "Cobechenonk" – "leave the canoes and go back" – for this was the beginning of the Toronto Carrying Place. Here they portaged their canoes northward to the Holland River, and paddled across Lake Simcoe. Then they took the Severn River to the Georgian Bay, crossed the huge lake named after their vanquished allies, then returned to their ancestral homeland, "Ojibwa Kechegame," "the big water of the Ojibwas," or Lake Superior.[47]

With the loss of British territory south of the lakes to the Americans, the Carrying Place assumed a new importance as a safe transportation route to the vast, fur-rich territories held by the British in the northwest interior of the continent. As a result, it was not long before enterprising individuals

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44 Peter S. Schmalz, *The Ojibwa of Southern Ontario* (Toronto: University of Toronto Press, 1991), 105.

45 Robert J. Surtees, "Land Cessions, 1763–1830," in *Aboriginal Ontario: Historical Perspectives of the First Nations* (Toronto: Dundurn Press, 1994), 102.

46 Percy J. Robinson, "The Toronto Carrying-Place and the Toronto Purchase," in (1947), 39 *Ontario History* 44 (ICC Exhibit 6A).

47 Donald B. Smith, "The Dispossession of the Mississauga Indians: a Missing Chapter in the Early History of Upper Canada," in (1981, 73, no. 2 *Ontario History* 70 (ICC Documents, p. 883 EE).

petitioned the British authorities for land along the portage route, or for the right to control transportation along its course.

The first of these was Montreal-based fur trader Benjamin Frobisher, who was associated with the recently organized North West Company. Recognizing that the Carrying Place afforded a relatively short canoe route to Lake Superior located entirely within British territory, he applied to the British authorities for land along the portage in 1784.[48] It appears that Lieutenant Governor Henry Hamilton subsequently instructed Frobisher to examine the relative merits of various existing portage routes north of Lake Ontario, and to report on their suitability for inland transport. Frobisher's report, dated May 1785, strongly favoured the Toronto Carrying Place as the most practicable transport route in the region, and he suggested to Hamilton that there would be "no difficulty" in making the necessary purchase from the Mississaugas.[49]

As well, in 1785 Philippe-François de Rastel de Rocheblave, who had commanded a British post in Illinois during the first years of the American Revolution, applied for land at Toronto, which had been the site of a French military fort throughout the 1750s. De Rocheblave had arrived in New France during the Seven Years' War and would have known that Toronto had been a profitable fur-trading centre during the French régime.[50] He was certainly aware of the advantages offered by Toronto as a safe harbour along an efficient transportation route to Lake Superior.[51] As a consequence, he proposed that he be granted a licence to transport goods and canoes along the Carrying Place to Lake Simcoe.

Concurrent with the above inquiries, the British authorities were considering how best to maintain strategic control of their western frontier. For some time they had pursued a policy of establishing settlements near their remaining forts along the newly established boundary with the

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48 Percy J. Robinson, "The Toronto Carrying-Place and the Toronto Purchase," in (1947), 39 *Ontario History* 47 (ICC Exhibit 6a).

49 Benjamin Frobisher, Trader, North West Company, to Hon. Henry Hamilton, Lieutenant Governor, Upper Canada, May 2, 1785 (ICC Documents, pp. 59–60).

50 Percy J. Robinson, *Toronto during the French Regime*, 2nd ed. (Toronto: University of Toronto Press, 1965), 152.

51 Percy J. Robinson, "The Chevalier de Rocheblave and the Toronto Purchase," in (1937), 3rd ser., 31 *Transactions of the Royal Society of Canada* sec. II, 135–36.

United States. Although there had never been a British post at Toronto, the colonial authorities were persuaded of the value of the Toronto Carrying Place, and of the adjacent site of Toronto,[52] and decided to secure the land in question. As the land was subject to the terms of the *Royal Proclamation*, however, it became necessary to negotiate with the Mississaugas once more. To this end, on July 19, 1787, Governor Dorchester wrote to John Collins, the Deputy Surveyor General:

> It being thought expedient to join the settlements of the Loyalists near to Niagara, to those west of Cataraqui [Kingston]. Sir John Johnson has been directed to take such steps with the Indians concerned, as may be necessary to establish a free and amicable right for Government to the interjacent lands not yet purchased on the north of Lake Ontario, for that purpose; as well as to such parts of the country as may be necessary on both sides of the proposed communication from Toronto to Lake Huron.[53]

Superintendent General of Indian Affairs Sir John Johnson and his party arrived at the Bay of Quinte in September of that year to meet with the Mississaugas who occupied the lands in question. What discussions or negotiations actually took place, however, remain obscure. To begin with, the September 23, 1787, surrender document did not describe the physical boundaries or the quantity of land surrendered, nor did the body of the document name the Chiefs of the bands from whom the surrender was taken. At the end of the document, the names of three Chiefs, Wabakinine, Neace, and Pakquan, together with their totems, appeared on slips of paper that had been attached to the document. The witnesses to the surrender were stated to be John Collins, Louis Protle, and interpreter Nathaniel Lines.[54]

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[52] Robert J. Surtees, "Indian Land Surrenders in Ontario: 1763-1867," unpublished paper, February 1984, pp. 35–36 (ICC Exhibit 10). Surtees suggests that the most northerly portion of the Carrying Place may have come to the attention of the colonial authorities as early as 1780, and that there may have been a prior attempt to obtain a surrender of that portion of the route from the northern Ojibwas of the district.

[53] Lord Dorchester, Captain General and Governor in Chief, to John Collins, Deputy Surveyor General, July 19, 1787, Bureau of Archives for the Province of Ontario, *Third Report*, 1905, 379 (ICC Documents, p. 68).

[54] Surrender, September 23, 1787, *in Canada, Indian Treaties and Surrenders, from 1680 to 1890* (Ottawa, Brown Chamberlin, 1891; reprint, Saskatoon: Fifth House Publishers, 1992), I: 32–34 (ICC Documents, pp. 69–71).

The only extant descriptions of this meeting postdate the actual event, and contradict each other and the surrender document itself. One such account, from a traveller and trader claiming to have been present, refers to the Bay of Quinte meeting as taking place on September 19, 1787:

> At twelve o'clock the next day [September 19] a council was held and Sir John laid his map before them, desiring a tract of land from Toronto to Lake Huron. This the Indians agreed to grant him and the deed of gift being shown them, it was signed by the chiefs affixing the emblem, or figure of their respective totems, as their signatures.[55]

Another account was given by the interpreter Nathaniel Lines to the Deputy Superintendent General of Indian Affairs, Alexander McKee:

> Mr. Nathaniel Lines Indian Interpreter at Kingston says he was present at the Head of the Bay of Quinté where he witnessed the Blank Deed supposed by him at the time to be a proper Deed of Conveyance of Lands from the Mississaugas resorting to the Bay of Quinté, the Rice Lake and Lac La Clie [Lake Simcoe] – Commencing at the Head or carrying place of the Bay of Quinté to a Creek called Tobeka [Etobicoke] from seven to fourteen miles above Toronto with a Reservation of the Rice Lake and of a certain place which Mr. Lines does not recollect between the said Rice Lake and Lake Ontario, but the lands intended to be sold and purchased at that time are connected all the way in front on Lake Ontario running in depth 10 or 12 Miles nearly as far as the Rice Lake and above the Rice Lake a Common days Journey back as far as Toronto.
>
> Mr. Lines further says that Sir John Johnson, Mr. Collins the Surveyor and several others were present, and that immediately after the delivery of the goods which were the Consideration for the lands, he Mr. Lines was called to witness the Blank Deed (now shewn to him but supposed to have been regularly drawn) and he further says that he saw the Indians make their marks upon the Slips of Paper which were wafered on the Deed before the Marks were made thereon.[56]

Sir John Johnson recalled the event as follows:

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[55] Union of Ontario Indians, "Mississauga Tribal Claims Council, Claim to Toronto Purchase Lands in Southern Ontario Summary of Claim," June 10, 1986 (ICC Exhibit 2), 12-13, citing M.M. Quaife, ed., *John Long's Voyages and Travels in the Years 1768-1788* (Chicago: Lake Side Press, 1922), 222–23 (ICC Documents, pp. 445–46).

[56] A. McKee, DSGIA, "Statement of Nathaniel Lines," June 10, 1795, National Archives of Canada [hereafter NA], RG 10, vol. 9, pp. 8812–9222 (ICC Documents, pp. 203–4).

> Though there were no General Instructions at that period that I recollect for my guidance in the purchase of Lands from the Indians. I followed the mode that has been observed on former occasions as far as local Circumstances and the absence of the Governor would permit – and according to the [illegible] of my recollections the purchase was duly executed, not only by the Indians but by myself on the part of the King, in the presence of Mr. Collins, Mr. Langan, Mr. Lines the Interpreter, Mr. Chambers, Clerk to Mr. Collins now, I think, in Quebec, and a number of other persons. – The Description must have been according to the purchase, ten miles square at Toronto, and two or four Miles, I do not recollect which, on each side of the intended road or Carrying Place leading to Lac le Clai [Simcoe], then ten miles square at the Lake and the same square at the end of the water communication emptying into Lake Huron – this Deed was left with Mr. Collins, whose Clerk drew it up to have the courses inserted when the Survey of these Tracts were completed and was never returned to my Office.[57]

Documents from the records of the Department of Indian Affairs include a "Distribution of Arms, Ammunition, & Tobacco made by Sir Johnson ... to the Missesagey Indians assembled at the Head of the Bay de Quinte the 23rd September, 1787." This list referred to a "formal cession of lands on the north side of Lake Ontario," and to the fact that the goods were distributed not only to those Mississaugas assembled at Quinte, but also to those members of the "same Nation" who were located at Toronto and River Le Trench [Thames], a total of 1,017 persons.[58] As well, in a letter dated October 19 of that year, Johnson stated that he had recently presented approximately 1,000 members of the Mississauga Nation with goods to the value of £2,000, "for their readiness in giving their Country to the Loyalists."[59]

The British were evidently satisfied that they had concluded a valid purchase with the Mississaugas, as they took steps the following year to have the parcel surveyed. On July 7, 1888, Deputy Surveyor General Collins instructed Alexander Aitken to conduct a survey of the land purchased the year before. Aitken arrived at Toronto on August 1, and, in accordance with his instructions, began by attempting to establish the eastern boundary of the parcel at the "lower end

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57 Sir John Johnson, Superintendent, Department of Indian Affairs, Quebec, to James Green, Military Secretary, Quebec, March 26, 1798, in Percy J. Robinson "The Chevalier de Rocheblave and the Toronto Purchase," (1937), 3rd ser., 31 *Transactions of the Royal Society of Canada* sec. II, 144–46 (ICC Documents, pp. 247–49).

58 "Distribution List," n.d., NA, RG 10, vol. 10029 (ICC Documents, pp. 73–74).

59 Sir John Johnson, Superintendent, Department of Indian Affairs, Quebec, to Daniel Claus, Department of Indian Affairs, October 19, 1787, NA, MG 19, vol. 4, reel C-1478 (ICC Documents, p. 78).

of the beach which forms the Harbour," which has been interpreted by the Mississaugas of the New Credit First Nation as referring to the end of Ashbridges Bay.[60] A local Mississauga Chief objected to that location, insisting that his people had not sold any land east of the Don River. With the assistance of interpreter Nathaniel Lines, Aitken held discussions with Mississauga leaders, and by August 11 had secured their agreement to his original eastern boundary point.[61] The survey then proceeded westward to the Humber River, beyond which the Indians would not let him continue, as they again disputed the extent of the land that had been sold. Colonel Butler, a prominent military officer and a subordinate of Sir John Johnson, held discussions with the Mississaugas on this issue, and as a result, Aitken was able to continue further west, establishing the western boundary at Etobicoke Creek. He began to survey the western boundary perpendicular to the lake, but was only able to run the line some two and three-quarter miles inland, before deciding to halt the work to avoid any more disputes with the local Chiefs.[62] During that summer, Aitken also surveyed a town plot for the future settlement of Toronto.[63]

Some of the confusion surrounding the 1787 surrender stems from the obvious discrepancy between the extent of land surveyed by Aitken in 1788 and the recollection of Sir John Johnson: the distance from Ashbridges Bay to the Etobicoke Creek exceeds the "ten miles square" apparently originally contemplated by Sir John Johnson. The historical record is further obscured by Nathaniel Lines's statement that the surrendered tract extended 10 or 12 miles inland to Rice Lake. Rice Lake is located north of Port Hope, many miles east of the eastern boundary of the purchase. It may be that the above confusion arose as a result of an additional purchase of land east of Toronto from the Mississaugas in August 1788. Surveyor Aitken's report of September 15, 1788, refers to a new land

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60 Kim Fullerton, Legal Counsel for the Mississaugas of the New Credit First Nation, to Perry Robinson, Counsel, DIAND Legal Services, March 8, 1999, p. 6 (ICC file 2105-7-2, vol. 1).

61 Alexander Aitken, Surveyor, Government of Quebec, to John Collins, Deputy Surveyor General, Government of Quebec, September 15, 1788, in Percy J. Robinson, *Toronto during the French Regime*, 2nd ed. (Toronto: University of Toronto Press, 1965), 166–68 (ICC Documents, pp. 88-90).

62 Alexander Aitken, Surveyor, Government of Quebec, to John Collins, Deputy Surveyor General, Government of Quebec, September 15, 1788, in Percy J. Robinson, *Toronto during the French Regime*, 2nd ed. (Toronto: University of Toronto Press, 1965), 166–68 (ICC Documents, pp. 88–90).

63 "Plan of Toronto by Alex. Aitken, 1788," NA, National Map Collection, No. 43212 (ICC Exhibit 8A).

purchase that summer extending eastward from Toronto to Pemitescutiang (Port Hope).[64] Colonel Butler, in a report to Sir John Johnson dated August 26, 1788, advised that the purchase extended further east to the Bay of Quinte:

> I called them [Mississaugas] to Council and made a Proposal to purchase all the Lands to the Bay of Quinty, and as far back as Lake La Clay [Simcoe] and the Rice Lake, which, after two or three meetings, they agreed to. I then proposed to them to run a Strait Line from the place of Beginning above Toronto 15 or 16 miles Back as that being supposed to be the breadth from the Clay bank to the said Place of beginning.[65]

Notwithstanding that no deed of surrender was ever taken,[66] it appears that Colonel Butler believed that the British now owned a large block of land on the north shore of Lake Ontario extending from the mouth of Etobicoke Creek ("Place of beginning") on the west to the Bay of Quinte on the east. Whether this was an entirely new purchase, or an extension and clarification of the 1787 purchase, is a matter of interpretation.[67] In any event, the vagueness of the original 1787 surrender document, together with the many discrepancies in the accounts of its surrounding circumstances, presaged future doubts as to the surrender's validity.

In 1791, the Province of Quebec was divided into Upper and Lower Canada. Shortly afterwards, in contemplation of the continuing settlement of the upper province, the authorities took steps to survey the lands purchased in 1787 and 1788 into counties. The influx of settlers caused great consternation among the Mississaugas, however, as the newcomers encroached on their fisheries and denied them the right to cross patented land. The Mississaugas began to understand that the purchases of the 1780s were not agreements to share the land but, rather, were outright

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64 Alexander Aitken, Surveyor, Government of Quebec, to John Collins, Deputy Surveyor General, Government of Quebec, September 15, 1788, in Percy J. Robinson, *Toronto during the French Regime*, 2nd ed. (Toronto: University of Toronto Press, 1965), 166–68 (ICC Documents, pp. 88–90).

65 Extract of a letter from Lt.-Col. Butler to Sir John Johnson, August 26, 1788, in Bureau of Archives for the Province of Ontario, *Third Report*, 1905, 410 (ICC Exhibit 9, tab 2).

66 Percy J. Robinson, "The Chevalier de Rocheblave and the Toronto Purchase," in (1937), 3rd ser, 31 *Transactions of the Royal Society of Canada* sec. II, 145.

67 Robert J. Surtees, "Indian Land Surrenders in Ontario: 1763–1867," unpublished paper, February 1984, pp. 38–40 (ICC Exhibit 10).

surrenders. They began to protest to government officials, and on occasion their discontent and frustration led to raids on settlers' farms.[68]

For their part, British administrators were aware of the irregularities in the 1787 surrender and were concerned that their security of tenure in the lands purchased in 1787–88 had been compromised.[69] This was a significant concern, not only because of the many improvements that settlers had made on patented land, but also because the colonial authorities intended to establish the capital of Upper Canada at Toronto.

The newly appointed Lieutenant Governor of Upper Canada, John Graves Simcoe, took it upon himself to investigate the status of the 1787 purchase. His concerns had first arisen in the course of his proposed acquisition of Penetanguishene, located on Georgian Bay near the northern terminus of the Toronto Carrying Place route. In the course of his investigation he contacted colonial administrators for copies of the surrender deeds respecting the Carrying Place and the Toronto purchase. In January 1794, he received a letter from Governor General Dorchester regarding the existence of the largely blank 1787 surrender document:

> a Plan (Copy of which I believe was given to you) has been found in the Surveyor General's Office, to which is attached a blank deed, with the names or devices of three Chiefs of the Mississauga Nation, on separate pieces of paper annexed thereto, and witnessed by Mr. Collins, Mr. Kotte, a Surveyor, since dead, and Mr. Lines, Indian Interpreter, but not being filled up, is of no validity, or may be applied to all the Land they possess; no Fraud has been committed or seems to have been intended. It has, however, an omission which will set aside the whole transaction, and throw us entirely on the good faith of the Indians for just so much Land as they are willing to allow, and what may be further necessary must be purchased anew, but it will be best not to press that matter or show any anxiety about it.[70]

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[68] Donald B. Smith, "The Dispossession of the Mississauga Indians: a Missing Chapter in the Early History of Upper Canada," in (1981) 73, no. 2 *Ontario History* 70 (ICC Documents, pp. 883 EJ–883 EK).

[69] Robert J. Surtees, "Indian Land Surrenders in Ontario: 1763–1867," unpublished paper, February 1984, p. 42 (ICC Exhibit 10).

[70] Lord Dorchester, Captain General and Governor in Chief, to J.G. Simcoe, Lieutenant Governor, Upper Canada, January 24, 1794, in E.A. Cruikshank, ed., *The Simcoe Papers*, vol. 2 (Toronto: Ontario Historical Society, 1924), 137 (ICC Documents, pp. 163–64).

Notwithstanding Dorchester's unequivocal advice regarding the surrender's invalidity, Simcoe proposed to rectify the situation by having the blanks on the document filled in in the presence of the two surviving Chiefs who had originally participated in the transaction.[71] In response, Dorchester advised that no further action should be taken because of the absence from Canada of Sir John Johnson, who had presided at the original surrender, and who, as Superintendent General, was required to be present at all land negotiations with the Indians.[72]

In December 1794, Dorchester wrote to Alexander McKee, who had been appointed Deputy Superintendent General of Indian Affairs during Johnson's absence, enclosing a copy of the blank surrender deed of 1787. He advised McKee of the background to the 1787 purchase stating that the "proceedings are so informal and irregular as to invalidate and set aside the whole transaction," and that the deed itself was "of no validity or value."[73] He advised McKee that no use was to be made of the document, that it was forwarded only to make him aware of what had transpired. It appears that McKee then undertook his own investigation, including obtaining the statement from interpreter Nathaniel Lines, quoted earlier, regarding the circumstances surrounding the 1787 purchase. McKee clearly believed that the purchase would soon be rectified, as he intended to show the 1787 document to the Mississaugas in the course of a new meeting at which the transaction would be made legal.[74] For reasons that are unknown, however, no meeting took place, and there was no further action on the matter for several years.

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71 J.G. Simcoe, Lieutenant Governor, Province of Upper Canada, to Lord Dorchester, Captain General and Governor in Chief, March 3, 1794, in E.A. Cruikshank, ed., *The Simcoe Papers*, vol. 2 (Toronto: Ontario Historical Society, 1924), 174 (ICC Documents, p. 165).

72 Lord Dorchester, Captain General and Governor in Chief, to J.G. Simcoe, Lieutenant Governor, Upper Canada, September 22, 1794, in E.A. Cruikshank, ed., *The Simcoe Papers*, vol. 3 (Toronto: Ontario Historical Society, 1924), 104 (ICC Documents, p. 178).

73 Lord Dorchester, Captain General and Governor in Chief, to Alexander McKee, Deputy Superintendent General, Department of Indian Affairs, December 24, 1794, NA, RG 10, vol. 8, pp. 8124–8811 (ICC Documents, pp. 192–94).

74 Alexander McKee, Deputy Superintendent General, Department of Indian Affairs, to Lord Dorchester, Captain General and Governor in Chief, July 3, 1795, NA, RG 10, vol. 9, pp. 8812–9222 (ICC Documents, pp. 205–19).

FORMALIZING THE TORONTO PURCHASE, 1805

The Toronto purchase would not again come to the attention of the colonial authorities until 1797. By that time, Simcoe had been recalled, and had been replaced by Peter Russell as administrator of Upper Canada, pending the appointment of a new lieutenant governor. Russell had arrived in office amid a state of high tension between the settlers and the Mississaugas. Some of this tension stemmed from the murder of Chief Wabakinine in 1796 by a British soldier.[75] This serious incident served to rekindle old resentments among the Mississaugas, and for a while the settlers feared an Indian uprising. The grievances of longest standing, however, concerned land issues, and Russell found his new administration enmeshed in a tangle of land disputes involving the settlers and the Mississaugas. As a result, the precarious state of the government's land tenure, as well as the need to acquire additional land for settlers, became issues of importance to colonial administrators.

Russell's ability to resolve these disputes was severely hampered by his lack of clear information regarding the ownership of the land in question, in particular, the terms of the original surrenders. In September 1797, he wrote to the new Governor General, Robert Prescott, asking for copies of the deeds in question, including the 1787 deed of the Toronto purchase.[76] The following month, Prescott replied, advising Russell that it would serve no useful purpose to send him a copy of the 1787 surrender deed "as that transaction is totally invalid, none of the blanks having been filled up."[77] Russell replied:

> Having laid before His Maj's Executive Council for this Province the part of your Excy's letter No. 26 in answer to mine No. 30, with the papers therein enclosed, we were exceedingly alarmed on reading the Paragraph which related to the Purchase made at Toronto in 1797 [sic, 1787?], which if more generally known, would probably shake the Tranquillity of many respectable Persons, who have risked nearly their whole Property within its Limits. *For should the whole of that Transaction be invalid*, as your Excy and Lord Dorchester have judged it to be, the Kings right to

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75 Donald B. Smith "The Dispossession of the Mississauga Indians: a Missing Chapter in the Early History of Upper Canada," in (1981), 73, no. 2 *Ontario History* 76 (ICC Documents, p. 883 EK).

76 Peter Russell, Administrator, Upper Canada, to Robert Prescott, Governor in Chief, Quebec, September 21, 1797, in E.A. Cruikshank, ed., *The Russell Papers*, vol. 1 (Toronto: Ontario Historical Society, 1925), 284–85 (ICC Documents, p. 231).

77 Robert Prescott, Governor in Chief, Quebec, to Peter Russell, Administrator, Upper Canada, October 21, 1797, NA, RG 10, vol. 2330, file 67071-3, pt. 2, reel C-11202 (ICC Documents, p. 232).

> any Part of the Land between the Rivers Etobicoak & Don, may become very doubtful; and our tenure of the intermediate Space (involving a great many cultivated farms, as well as the Seat of Government) might consequently be at the Mercy of the Messissagues, who, if they were apprized of the Circumstance, might be induced to give trouble with a view of making their own advantages from it.[78]

Russell then proposed a solution, which would require the government to be less than candid with the Mississaugas. The plan involved the surrender of some new lands adjacent to the Toronto purchase, and, without drawing too much attention to the fact, a recapitulation of the 1787 transaction in the new deed of purchase, which would be signed by the Mississaugas.[79]

Before advising Russell of his decision on this plan, Governor General Prescott consulted Sir John Johnson for a full report on the original transaction.[80] Johnson replied that the Indians had been fully compensated and that he had never heard them deny the 1787 sale, but that to ease the minds of administrators it would be advisable to have the Mississaugas sign a survey plan and a new deed dealing with all purchases north of Lake Ontario since 1784.[81] Prescott decided that he preferred a variation of Johnson's plan rather than the deceptive proposal made by Russell. He advised Russell that the latter's plan

> is a measure I cannot agree to, on account of its tendency to mislead the Indians, and would be productive of the most dangerous consequences to the King's Interest, as soon as they should discover, that they had not been openly dealt with ... It would in my opinion, be preferable to renew the Purchase altogether, than to risk the consequences that would inevitably follow, if your Plan was put in practice. I should

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78 Peter Russell, Administrator, Upper Canada, to Robert Prescott, Governor in Chief, Quebec, January 21, 1798, in E.A. Cruikshank, ed., *The Russell Papers*, vol. 2 (Toronto: Ontario Historical Society, 1925), 68–69 (ICC Documents, pp. 237–38). Emphasis in original.

79 Peter Russell, Administrator, Upper Canada, to Robert Prescott, Governor in Chief, Quebec, January 21, 1798, in E.A. Cruikshank, *ed., The Russell Papers*, vol. 2 (Toronto: Ontario Historical Society, 1925), 68–69 (ICC Documents, pp. 237–38).

80 James Green, Military Secretary, Quebec, to Sir John Johnson, Superintendent, Department of Indian Affairs, Quebec, March 12, 1798, in E.A. Cruikshank, ed., *The Russell Papers*, vol. 2 (Toronto: Ontario Historical Society, 1925), 117–18 (ICC Documents, pp. 243–44).

81 Sir John Johnson, Superintendent, Department of Indian Affairs, Quebec, to James Green, Military Secretary, Quebec, March 26, 1798, in Percy J. Robinson, "The Chevalier de Rocheblave and the Toronto Purchase," in (1937), 3rd ser., 31 *Transactions of the Royal Society of Canada* sec. II, 144–46.

> conceive, therefore, that to remedy the existing difficulty ... a New Deed of the Purchase in question should be executed with the Messissagua [sic] Indians.[82]

In the meantime, a number of Ojibwa leaders from Lakes Simcoe and Huron had travelled to Toronto, now renamed York, to complete the Penetanguishene purchase initiated by former Lieutenant Governor Simcoe. Prescott's letter, above, happened to arrive at the same time as the Chiefs' visit, and, as a result, Russell used the occasion to ascertain the Chiefs' understanding of the boundaries of the 1787 agreement. At the meeting, Chief Yellowhead, through an interpreter, apparently confirmed that the lands south of Lake Simcoe, including the Carrying Place, had been sold in accordance with the government's understanding.[83] Russell wrote to Prescott the next day to advise him of the Chiefs' reaction, and to inform him that the Executive Council was of the opinion that, in light of the views expressed by the Indians, it was no longer necessary to obtain a new deed for the Toronto purchase.[84]

It may be that the fears of the Executive Council were not completely alleviated, however, for it subsequently ordered the Land Board of Upper Canada to investigate and report how Indian lands might best be acquired and disposed of.[85] The report of the Land Board was read at a meeting of the Executive Council on October 22, 1798. It clearly stated that, if the Indians were to become aware of the true value of land in Upper Canada, the cost of that land to the government would rise dramatically. As a result, the board recommended:

> In order therefore to exercise that foresight which our Indian neighbours are but beginning to learn, and in which it certainly cannot be our interest to promote their

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82 Robert Prescott, Governor in Chief, Quebec, to Peter Russell, Administrator, Upper Canada, April 9, 1798, in E.A. Cruikshank, ed., *The Russell Papers*, vol. 2 (Toronto: Ontario Historical Society, 1925), 137–38 (ICC Documents, pp. 258–59).

83 Peter Russell, Administrator, Upper Canada, to Robert Prescott, Governor in Chief, Quebec, May 23, 1798, in E.A. Cruikshank, ed., *The Russell Papers*, vol. 2 (Toronto: Ontario Historical Society, 1925), 159–61 (ICC Documents, pp. 271–73). Whether these particular Chiefs had the right to validate the Toronto purchase is a separate issue.

84 Peter Russell, Administrator, Upper Canada, to Robert Prescott, Governor in Chief, Quebec, May 23, 1798, in E.A. Cruikshank, ed., *The Russell Papers*, vol. 2 (Toronto: Ontario Historical Society, 1925), 159–61 (ICC Documents, pp. 271–73).

85 Mississaugas of the New Credit, *Toronto Purchase Claim*, June 10, 1986 (ICC Exhibit 2, p. 52).

> improvement, we submit to your Honor's consideration the propriety of suspending the promulgation of the plan which has been laid down for us untill [sic] we can make a purchase sufficiently large to secure to us the means of extending the population and encreasing [sic] the strength of the Province, *so far as to enable us before our stock is exhausted to dictate instead of soliciting the terms on which future acquisitions are to be made* – For we are satisfied that the purchase of 50 or even 100 Townships, if made now, will cost us less than the purchase of ten after the promulgation of the Governor General's plan.[86]

The colonial authorities had already experienced some hard bargaining as a result of the Indians' growing awareness of the value of their lands. The previous year, the British had attempted to purchase the "Mississauga tract," which was the stretch of unsurrendered land between the western boundary of the Toronto purchase and Burlington Bay. From the perspective of the colonial authorities, the acquisition of this large tract was necessary to carry out their stated policy to populate southern Ontario with agricultural immigrants.[87] However, the authorities wished to acquire the land from the Mississaugas at a very nominal price, so that they could use the profit from its resale to fund the construction of roads and canals necessary for the development of Upper Canada. The government price was far below that obtainable in the open market, which had been established when Joseph Brant, in defiance of the *Royal Proclamation*, sold some of the Iroquois' land on the Grand River to private parties. Consequently, when government officials had approached the Mississaugas to sell the tract in October 1797, they had insisted on a price for the land that was considered by the government to be excessive, and which it refused to pay. As a result, no sale was concluded at that time.[88]

The Land Board's plans to dictate the terms of land purchases had been further thwarted by the decision of the Mississaugas to conclude an alliance with the Iroquois on the Grand River. The Mississaugas had gradually become aware of the implications inherent in "surrenders" and

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[86] Upper Canada, Executive Council, Minutes, October 2, 1798, in E.A. Cruikshank, ed., *The Russell Papers*, vol. 2 (Toronto: Ontario Historical Society, 1925), 290–91 (ICC Documents, pp. 286–87). Emphasis added.

[87] Leo A. Johnson, "The Mississauga – Lake Ontario Land Surrender of 1805," in (1990), 83, no. 3 *Ontario History* 233–34 (ICC Exhibit 13).

[88] Leo A. Johnson, "The Mississauga – Lake Ontario Land Surrender of 1805," in (1990), 83, no. 3 *Ontario History* 238–39 (ICC Exhibit 13), citing "Memoir of William Dummer Powell," November 1, 1797, in E.A. Cruikshank, ed., *The Russell Papers*, vol. 2 (Toronto: Ontario Historical Society, 1925), 19–22.

"purchases," and they realized that they needed allies in their dealings with the British. The Mississaugas knew that the Six Nations had extensive experience with the British in New York, and they were also aware of Brant's private sales of land on the Grand River, which the local authorities had not succeeded in overturning. To assist them in their negotiations with the British, the Mississaugas had appointed Joseph Brant as their "guardian and agent"[89] in land matters in April 1798. Subsequently, Brant began negotiations with the authorities for the sale of the Mississauga tract, asking a price that was unprecedented for a government purchase. As result, the British would not conclude an agreement for the land, and the confirmation of the Toronto purchase was not pursued.

The British then realized that they needed to change their tactics. Lord Portland, the Colonial Secretary, devised a strategy to regain the upper hand in dealings with the Mississaugas. First, he instructed colonial administrators to attempt to foment jealousy and discord between the Iroquois and the Mississaugas, in order to weaken Brant's influence.[90] Secondly, presents were no longer to be distributed to the Mississaugas as of right, but only as a reward for good behaviour.[91] Finally, Lord Portland instructed Administrator Peter Russell to refuse to purchase any Mississauga land at all, while at the same time preventing any private sales, so that the land would lose its value in the eyes of the Mississaugas. The theory was that, to maintain the goodwill of the authorities and ensure the continued provision of presents, the Indians would eventually be willing to sell land at the low government price.[92]

By the beginning of the 19th century, the old hostilities between the Six Nations and the Mississaugas began to resurface, and Brant's influence began to wane. As well, the deliberate policy

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89 Leo A. Johnson, "The Mississauga – Lake Ontario Land Surrender of 1805," in (1990), 83, no. 3 *Ontario History* 239 (ICC Exhibit 13).

90 Donald B. Smith "The Dispossession of the Mississauga Indians: a Missing Chapter in the Early History of Upper Canada," in (1981), 73, no. 2 *Ontario History* 80 (ICC Documents, p. 883 EO).

91 Leo A. Johnson, "The Mississauga – Lake Ontario Land Surrender of 1805," in (1990), 83, no. 3 *Ontario History* 244 (ICC Exhibit 13), citing Portland to Russell, November 5, 1798, in E.A. Cruikshank, ed., *The Russell Papers*, vol. 2 (Toronto: Ontario Historical Society, 1925), 300.

92 Leo A. Johnson, "The Mississauga –Lake Ontario Land Surrender of 1805," in (1990) 83, no. 3 *Ontario History* 244 (ICC Exhibit 13), citing Portland to Russell, November 5, 1798, in E.A. Cruikshank, ed., *The Russell Papers*, vol. 2 (Toronto: Ontario Historical Society, 1925), 300.

mandating that the annual presents of European goods were to be conditional upon good behaviour likely weakened the Mississaugas' resolve to insist upon market value for the sale of their land. The colonial administrators took the opportunity to pursue the issue of land surrenders once more, and the rectification of the Toronto purchase was again at the forefront of their dealings with the Mississaugas.

Concurrent with the need to obtain new land for agricultural settlement was the need to secure the government's title to its own capital city.[93] As a result, the Lieutenant Governor, now Peter Hunter, ordered his officials to obtain a new deed of surrender for the 1787 purchase at the same time that new negotiations for the Mississauga tract were to take place.[94] In preparation for the meetings with the Mississaugas, the Deputy Superintendent General of Indian Affairs, William Claus, directed surveyor William Chewitt to prepare two plans, each depicting a different western boundary for the Toronto purchase. According to Chewitt's letter transmitting the plans to Claus, the first plan was drawn according to "the Survey made by Mr Jones"[95] and the second was drawn according to "that which you were pleased to say the Indians conceived to be the true Boundary."[96] It is likely that the first plan placed the western boundary at Etobicoke Creek, as that was the boundary drawn by Alexander Aitken in 1788, and it is possible that the second plan placed the boundary at the Humber, as originally asserted by the Mississaugas in that same year. Clearly, Claus contemplated two possible outcomes of his forthcoming meetings with the Mississaugas regarding the Toronto purchase.

The first meeting between William Claus and the Mississaugas took place on July 31, 1805, at the Credit River. According to minutes taken at the time, Claus informed the Mississaugas that the exact limits of the 1787 purchase had not been adequately defined at the time of the original

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93 Robert J. Surtees, "Indian Land Surrenders in Ontario: 1763–1867," unpublished paper, February 1984, p. 61 (ICC Exhibit 10).

94 The concurrent timing of these two transactions was also undoubtedly dictated by the need to determine the extent of the 1787 purchase before the eastern boundary of the Mississauga tract could be defined.

95 Possibly Augustus Jones, the Deputy Surveyor, who was working in the Lake Simcoe area in 1794. See W. Chewitt to E.B. Littlehales, August 31, 1794, in E.A. Cruikshank, ed., *The Simcoe Papers*, vol. 3 (Toronto: Ontario Historical Society, 1924), 24 (ICC Exhibit 7, tab 3).

96 W. Chewitt, Senior Surveyor and Draftsman, to Colonel William Claus, Deputy Superintendent General, July 30, 1805, NA, RG 10, vol. 26, pp. 14966–15599 (ICC Documents, pp. 305–8).

negotiations, and that he wished to ascertain their view as to the correct boundary, so that a new deed could be drafted and executed. Chief Quinepenon, the spokesman for the Mississaugas, stated:

> all the Chiefs who sold the Land you speak of are dead and gone. I now speak for all the Chiefs of the Mississaugues; We cannot absolutely tell what our old people did before us, except by what we see on the plan now produced & what we remember ourselves and have been told.[97]

It appears from the above that the Mississaugas were shown only one plan, and it also appears that the plan in question placed the western boundary of the Toronto purchase at Etobicoke Creek:

> Our old Chiefs told us that the line was on the East side of the Etobicoke following the courses of the River upwards from its mouth to the most Easterly bend of the same two or three miles up in a strait line. That the River then runs from the westward, but a continuation of that strait line from the mouth of the River and intersecting that Easterly bend was the boundary. It was then agreed Father that all the Lands on the west side of the River should remain to us & all on the East side to the King until the strait line from the mouth of the River out that Easterly bend & then that same line was continued & left the River to the westward. And our old Chiefs at the same time particularly reserved the fishery of the River to our Nation.[98]

The formal deed of surrender confirming the Toronto purchase was drawn up and executed on August 1, 1805, the date that the surrender of the Mississauga tract was negotiated. In addition to confirming the 1787 transaction made with Sir John Johnson, the deed included a detailed legal description of the boundaries of the surrendered parcel, which comprised some 250,880 acres of land, and which was made subject to the First Nation's right to fish in Etobicoke Creek. The total consideration for the Indians' consent to the above was 10 shillings.[99]

During the July 31 negotiations, the Mississaugas had also requested presents in exchange for their cooperation in the transaction:

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97 "Proceedings of a Meeting with the Mississagues at the River Credit 31st July 1805," NA, RG 10, vol. 1, reel C-10996 (ICC Documents, pp. 309–12).

98 "Proceedings of a Meeting with the Mississagues at the River Credit 31st July 1805," NA, RG 10, vol. 1, reel C-10996 (ICC Documents, pp. 309–12).

99 "Principal Chiefs of the Mississaugue Nation to His Majesty the King," Surrender Instrument, August 1, 1805, NA, RG 10, vol. 1, reel 10996 (ICC Documents, pp. 318–23).

> We hope you will consider us on this occasion and give us something. We have heretofore been satisfied with what our Father had given us, but we hope for something more than ordinary on the completion of this business. We have always told you the truth & we hope our general conduct has deserved your approbation.[100]

The Deputy Superintendent's reply was that

> he had it not at present in his power but he will report their request to the Governor and hopes from his representation of their conducts the General may be induced to comply with their request.[101]

Notwithstanding the request, it appears that no further payment was made for the land.

After the surrender of the Mississauga tract and the confirmation of the Toronto purchase, the colonial government was in control of all of the northern shoreline of Lake Ontario. Future surrenders would eventually relegate the Mississaugas to a few small pockets of land, as settlers flooded into Upper Canada to take up the fertile farmland. As one historian has written:

> [W]ith the richest of their fishing waters depleted or effectively closed to them and the most fertile soil surrendered, and with increased competition in the northern areas from the whites for the remaining game and fur-bearing animals, the fragile hunting and gathering economy of the Lake Ontario Mississaugas collapsed. The old seasonal harvest of natural crops was destroyed, never to be regained. ... The government's stated policy of impoverishing the Indians for the economic benefit of the new colony had had its inevitable consequence.[102]

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100 "Proceedings of a Meeting with the Mississagues at the River Credit 31st July 1805," NA, RG 10, vol. 1, reel C-10996 (ICC Documents, pp. 309–12).

101 "Proceedings of a Meeting with the Mississagues at the River Credit 31st July 1805," NA, RG 10, vol. 1, reel C-10996 (ICC Documents, pp. 309–12).

102 Leo A. Johnson, "The Mississauga – Lake Ontario Land Surrender of 1805," in (1990), 83, no. 3 *Ontario History* 249–50 (ICC Exhibit 13).

PART III

ISSUES

This claim concerned the purchase of a large tract of land in southern Ontario, including the land upon which the City of Toronto is located, which was acquired by the British Crown as result of two separate transactions. The first transaction, evidenced only by a blank deed, took place in 1787. The second transaction, acknowledged as a valid treaty for the purpose of this inquiry, took place in 1805. The following is a more detailed summary of the issues as they were developed by the parties throughout the planning conferences:

1 Was the transaction that took place in 1787 valid as a surrender?

2 Did the Crown breach its fiduciary duty to the Mississaugas to fully explain the circumstances of the 1805 treaty prior to its execution, and in particular:

(a) Did the Crown disclose to the Mississaugas that the 1787 surrender was invalid, as its own senior officials, among themselves, had stated on many occasions?

(b) Did the Crown fail to disclose to the Mississaugas that the 1805 Toronto Purchase covered a much greater area than the 1787 transaction?

(c) Did the Mississaugas believe that the Toronto Islands were a part of the purchase, or did they believe that the islands were specifically excluded?

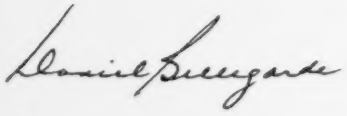
PART IV

CONCLUSION

On July 23, 2002, Robert D. Nault, Minister of Indian Affairs and Northern Development, informed Chief Bryan LaForme of the Mississaugas of the New Credit First Nation, that Canada was willing to accept for negotiation the specific claim known as the Toronto Purchase. For the purpose of negotiation, Canada accepted that the circumstances surrounding the 1805 surrender constituted a breach of lawful obligation on the basis that a treaty or agreement between the Indians and the Crown had not been fulfilled. Canada has not accepted that a lawful obligation exists as a result of a breach of fiduciary duty.

In light of Canada's offer to accept the claim for negotiation under the Specific Claims Policy, the Commission has suspended its inquiry and wishes the parties well in their negotiations towards a settlement.

FOR THE INDIAN CLAIMS COMMISSION



Daniel J. Bellegarde
Commissioner

Dated this 17th day of June, 2003.

APPENDIX A

MISSISSAUGAS OF THE NEW CREDIT FIRST NATION INQUIRY
TORONTO PURCHASE CLAIM

1 Planning conferences

July 16, 1998
October 1, 1998
November 25, 1998
February 8, 1999
April 13, 1999
June 10, 1999
July 27, 1999
September 14, 1999
October 19, 1999
December 20, 1999

2 Content of formal record

The formal record for the Mississaugas of the New Credit First Nation Inquiry – Toronto Purchase Claim consists of the following materials:

- the documentary record (1 volume of documents, with annotated index) (Exhibit 1)
- Exhibits 1a to 15 tendered during the inquiry

The report of the Commission and letters of transmittal to the parties will complete the formal record of this inquiry.

APPENDIX B

GOVERNMENT OF CANADA'S OFFER TO ACCEPT CLAIM

Minister of Indian Affairs and Northern Development

Ministre des Affaires indiennes et du Nord canadien

Ottawa, Canada K1A 0H4

WITHOUT PREJUDICE

JUL 2 3 2002

Chief Brian Laforme
Mississaugas of the New Credit
2789 Mississauga Road
RR 6
HAGERSVILLE ON N0A 1H0

Dear Chief Laforme:

On behalf of the Government of Canada and pursuant to the Specific Claims Policy, I offer to accept in part for negotiation the claim of the Mississaugas of New Credit First Nation known as the "Toronto Purchase".

Canada's preliminary position is that, pursuant to the Specific Claims Policy, an outstanding lawful obligation is owed to the Mississaugas of the New Credit First Nation based on a breach of agreement in relation to the 1805 Toronto Purchase surrender.

Mr. Michel Roy, Assistant Deputy Minister, Claims and Indian Government, Indian and Northern Affairs Canada, will write to you shortly to provide you with details on the basis for acceptance of the claim, the compensation criteria that will be applied to it, and the negotiation process that Canada is prepared to embark upon with you to reach a settlement of the claim.

I send my best wishes and hope that a fair settlement can be reached.

Yours sincerely,

Robert D. Nault, PC, MP

Canada

Indian Claims Commission

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